DEPARTMENT OF STATE REVENUE
CONSOLIDATED LETTER OF FINDINGS
00-0375, 00-0376, 00-0377
STATE WITHHOLDING, SALES, and RIVERBOAT ADMISSIONS TAX
For 1997

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ISSUES

I. Riverboat Building Credit – Claim for Credit

Authority: IC § 6-3.1-17-5; IC § 6-3.1-17-7; IC § 6-3.1-17-8; IC § 6-8.1-10-1

Taxpayer is protesting the billing of interest accrued after a two year delay in the application of a credit.

STATEMENT OF FACTS

Taxpayer built a casino/riverboat eligible for tax credits and submitted a request for application of said credits to taxpayer's tax liability. After a two year delay, taxpayer submitted sufficient information for the Department to apply the credit. Department applied the credit to taxpayer's liability at the time of the receipt of adequate information from taxpayer, which was after two years of interest had accumulated on the liability. Taxpayer is protesting this calculation of liability.

I. Riverboat Building Credit – Claim for Credit

DISCUSSION

IC § 6-3.1-17-5 establishes the credit in question; stating in relevant part:

> A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a qualified investment in that taxable year.

The qualified investment that would be eligible for the credit is defined in IC § 6-3.1-17-7 as:

> (a) To be entitled to a credit under this chapter, a taxpayer must request the department of commerce to determine whether costs incurred to build or refurbish a riverboat are qualified investments.
> (b) The request under subsection (a) must be made before the costs are incurred.
> (c) The department of commerce shall find that costs are a qualified investment to the extent that the costs result:
> (1) from the work performed in Indiana to build or refurbish a riverboat; and
> (2) in taxable income to any other Indiana taxpayer;
> As determined under the standards adopted by the department of commerce.

Taxpayer did fulfill the requirements of IC § 6-3.1-17-7. IC § 6-3.1-17-8 then establishes the requirements to claim the aforementioned credit:

> To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department the certification of credit by the department of commerce, proof of payment of the certified qualified investment, and all information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether an investment cost is a qualified investment cost.

Finally, IC § 6-8.1-10-1 requires:

> (a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.
> …
> (e) Except as provided by IC § 6-8.1-5-2(e)(2) the department may not waive the interest imposed under this section.

To receive the credit provided by this chapter the taxpayer was required to complete four steps. First, the taxpayer needed to build and pay for a riverboat/casino. Second, the taxpayer needed to receive certification of taxpayer expense from the Department of Commerce. Third, taxpayer had to provide proof of the expenses and credit due amounts to the Department of Revenue; and finally, taxpayer was to reflect the credit on the taxpayer's state tax return or returns in the manner prescribed by the Department. The taxpayer did not submit adequate documentation to prove expenses and credit due amounts to the Department until two years after the accrual of the tax liability for the year in question. While taxpayer argues that the various tax forms filed by taxpayer did not have a convenient arrangement for reflecting the credit, taxpayer does not address taxpayer's two year delay in providing the necessary documentation to the Department.

The time value of money is a well understood concept. The bond market, certificates of deposit, and loans all operate on the varying value of a sum certain over time. A sum certain based on that year's tax liability was incurred by taxpayer. The value in question -as would be expected in a financial transaction requiring an extended time- was modified by the accumulation of interest on the principle due. Taxpayer's delay in receiving the credit was a direct consequence of taxpayer's delay in providing supporting documentation to the Department as required by IC § 6-3.1-17-8. The accrual of interest on the liability over the two year delay was required by IC § 6-8.1-10-1. Taxpayer presents no statutory basis for the waiver of this interest.

FINDING

Taxpayer protest denied.

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